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**Senate Judiciary Committee
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**Proponent Testimony for Senate Bill No. 242
Submitted by Robert Hutchison, Acting Chief Deputy Attorney General
On Behalf of Office of the Attorney General**

Honorable Chairwoman Warren and Members of the Committee:

Thank you for the opportunity to present proponent testimony for Senate Bill No. 242. This bill protects Kansan's open access to their local government's activities and protects the State's sovereign authority from usurpation. Without this bill, Kansas's sovereignty is threatened by activist lawyers with the best sales pitch. The status quo cannot stand.

Constitutional and Legal Framework

To understand why SB 242 is necessary, it is important to understand the distinct legal authorities and roles of States versus their political subdivisions, especially under Kansas law.:

1. *State's Sovereign Authority*: The State possesses broad sovereign powers and authorized the attorney general to represent the State in all actions.¹ The State can not only sue for damages it directly incurs but can also bring actions on behalf of and for the benefit of all Kansans.² Importantly, because political subdivisions are instruments of the State, the State can also sue on behalf of and for the benefit of its political subdivisions whenever appropriate.³
2. *Political Subdivisions' Limited Authority*: Under Kansas law, political subdivisions possess home rule power, which includes the authority to sue and be sued as a corporate body

¹ See U.S. Const. amend. 10; *Late Corp. of the Church of Jesus Christ of Latter-Day Saints v. United States*, 136 U.S. 1, 57 (1890) ("The sovereign will is made known to us by legislative enactment"); K.S.A. 75-702 ("The attorney general shall appear for the state, and prosecute and defend any and all actions and proceedings, civil or criminal, in the Kansas supreme court, the Kansas court of appeals and in all federal courts, in which the state shall be interested or a party, and shall, when so appearing, control the state's prosecution or defense").

² See *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 600 (1982) (affirming the State's inherent sovereign authority to sue on behalf of the general welfare of its people).

³ See, e.g., *Illinois v. Associated Milk Producers, Inc.*, 351 F. Supp. 436, 440 (N.D. Ill. 1972) ("the State through its Attorney General is the proper and best representative of the political subdivision organized under the authority of the State" because "[j]ustice and judicial economy is best served by having the largest governmental unit sue on behalf of all its parts rather than having multiple suits brought by various political subdivisions within the State").

politic.⁴ However, this authority is strictly confined to their jurisdictional boundaries and to matters directly affecting the political subdivision itself.⁵ For example, a city may properly sue for damages to municipal-owned property or for breach of contracts to which the city is a party.⁶

3. *Critical Distinction*: The most concerning scenario—which SB 242 addresses—is when political subdivisions attempt to exceed their legal authority by suing not just for themselves but purportedly on behalf of their constituents, *other* political subdivisions, *other* political subdivisions’ constituents, and the State and its agencies, without legal authority. When a political subdivision attempts to litigate beyond its legal authority, that political subdivision threatens the State’s sovereign power and interests as well as the legal authority of other Kansas subdivisions.

The Problem of Contingent Fee Arrangements

The problem becomes particularly acute when political subdivisions enter into contingency fee arrangements with private attorneys to pursue overreaching claims, typically through class action litigation. These arrangements create several serious concerns:

- *Usurpation of State Authority*: Political subdivisions may attempt to represent interests far beyond their jurisdictional boundaries, infringing upon the State’s sovereign authority.
- *Foreclosure of Legitimate Claims*: By asserting unauthorized claims on behalf of the State or other political subdivisions, these actions may prevent legitimate legal claims from being brought later by the State or other political subdivisions. Even in settlements, the rights of the State and other political subdivisions may be negotiated away without consent.
- *Lack of Transparency*: These arrangements typically occur in executive session with minimal public scrutiny, leaving taxpayers unaware of potential financial risks their local governments may be assuming.
- *Financial Motivations*: Private contingency fee attorneys may be primarily motivated by potential financial gain rather than legitimately representing the public interest of the political subdivision or the State.

How SB 242 Preserves Constitutional Order

Senate Bill 242 establishes critical safeguards to maintain proper constitutional boundaries between the State and its political subdivisions. The bill requires transparency through open meetings and detailed disclosures, mandates substantive written findings justifying the necessity

⁴ K.S.A. 12-101 (cities home rule authority); K.S.A. 19-101a (county home rule authority).

⁵ *Bd. of Cnty. Comm’rs v. Nielander*, 275 Kan. 257, 264 (2003) (“Home rule powers are those granted by the Constitution or by legislative act to units of local government to transact local business and perform such local and administrative duties as these local units may deem appropriate, subject to certain limitations imposed upon such grant of power”); *Bd. of Cnty. Comm’rs v. Lewis*, 203 Kan. 188, 191 (1969) (“[Counties] are mere instrumentalities of the state in the exercise of its governmental functions, and are given corporate power only so far as may be necessary to aid those functions”).

⁶ *E.g., City of Moundridge v. Exxon Mobil Corp.*, 471 F. Supp. 2d 20 (D.D.C. 2007) (18 Kansas cities sued for commercial antitrust damages to their municipal owned and operated utilities).

of contingency fee arrangements, and implements Attorney General oversight to ensure litigation remains within proper authority. These provisions work together to prevent constitutional overreach while preserving political subdivisions' legitimate authority to address local legal needs.

SB 242 fundamentally protects Kansas's constitutional order by recognizing that while political subdivisions have important but limited legal authority, only the State possesses sovereign power to represent all Kansans. The result is a transparent, accountable process that respects local government autonomy while preventing the usurpation of state authority through private contingency fee arrangements.

The Office of the Attorney General strongly urges this committee to support SB 242 to protect Kansas sovereignty and ensure that litigation undertaken by political subdivisions remains within proper constitutional boundaries.

Respectfully submitted,

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